IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7648 OF 2006

M/s.Sulectrons ...Petitioner

V/s.

Mrs.Shaila Anand Madiwale & Another ...Respondents

Mrs.Sangeeta Vaidya for the Petitioner.
Mr.Anand Madiwale C.A. for respondents.

CORAM : A.P. DESHPANDE, J.

DATED : 23TH NOVEMBER, 2006.

P.C. :-

1. Present petitioner claims to be tenant in the suit premises which are admittedly owned by the respondents. Petitioner/plaintiff instituted suit in Small Causes Court at Pune, bearing Regular Civil Suit No.406/2000 for permanent injunction and possession. An interim injunction application was also moved in the said suit seeking direction against the respondents to remove the locks and hand over the possession of the premises. The interim application was granted by the Court and this petitioner was placed in possession of the said suit premises wherein the petitioner was carrying business of

workshop. On account of absence of petitioner and his counsel, the suit came to be dismissed on 1st March, 2004. The suit came to be dismissed in default. As there was delay in filing application for restoration an application for condonation of delay was also filed. After allowing the application for condonation of delay, matter came to be heard on the application seeking restoration and for setting aside the order of dismissal dated 1st March, 2004. The Trial Court has concluded that the petitioner has deliberately and intentionally prolonged the hearing of the matter and thus, has proceeded to reject the application seeking restoration of the suit

2. The Trial Court has recorded that the suit was fixed for recording evidence of the petitioner/plaintiff since 7/1/2001 and for one reason or the other, for more than two years there was no progress in the matter. Suit was fixed for filing examination in chief on affidavit on 25/11/2003. But on the said date petitioner and his advocate were absent. Not even application for adjournment was moved. The Trial Court instead of dismissing the suit in default, adjourned the matter to 9/1/2004 for passing the dismissal order. Matter was adjourned with a view to grant an opportunity to the

petitioner to participate in the trial of the suit. Again on 9/1/2004, application for adjournment was moved and suit was fixed on 23/1/2004. Again on 23/1/2004 petitioner and his advocate were absent. No application for adjournment was moved. Instead of passing dismissal order, suit was posted for passing dismissal order on 11/2/2004. Again on 11/2/2004 petitioner and his advocate were absent and petitioner failed to submit examination in chief on affidavit and not even application for adjournment was moved. Thereafter the matter was fixed on 1st March, 2004 and again petitioner and his advocate were absent. Application for adjournment was also not filed and the suit came to be dismissed in default. The Trial Court has considered the above referred conduct of absolute want of diligence on the part of petitioner and has held that after obtaining possession of premises under interlocutory order, petitioner is deliberately attempting to protract the litigation. Evidence of parties was also recorded for deciding the restoration application and after considering the evidence and material on record, the Trial Court has held that the petitioner/plaintiff has failed to establish sufficient cause for his absence and thus, rejected the

application moved by the petitioner for setting aside the order of dismissal in default so also seeking restoration of the suit. Possible view of the matter has been taken by the Trial Court. There is no patent illegality in the impugned order and hence, no interference is called for having regard to the conduct of the petitioner. Petition is, thus, summarily rejected.

3. Learned counsel for the petitioner at this stage seeks stay of this order of dismissal of the petition. As I have not passed any executable order, there is no question of staying the same. In the result prayer is rejected.

A.P. DESHPANDE, J.